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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Petition of GERALDINE BELL
LANGLEY to Establish Fact of Marriage.

GERALDINE BELL LANGLEY,

Petitioner and Appellant,

v.

LUCINDA LANGLEY ANDREWS,

Objector and Respondent.

A105449

(San Francisco County
Super. Ct. No. PES-03-285276)

Geraldine Bell Langley (petitioner) appeals from an order denying her petition under Health and Safety Code section 103450 to establish the fact of her marriage to Arlington Langley. Mr. Langley's daughter, Lucinda Langley Andrews, objected to the petition. Petitioner was unable to produce a signed marriage license, which precluded the court from granting the relief requested in her petition. We affirm.

BACKGROUND

Petitioner met Mr. Langley in 1960, when he was married to Andrews' mother. Langley lived in a room at her property beginning in 1960, and the two shared a bedroom beginning in 1964. Langley was divorced in 1967, and he and petitioner had an engagement party. From that time until his death on September 30, 2003, they lived together. Petitioner stated that they held themselves out as husband and wife. She stated

that Langley, a retired Army colonel, executed a notarized statement in 1982 representing that they had been married on June 6, 1968 in Reno, Nevada, but the records had been lost. The purpose of the declaration was to obtain military identification and benefits for petitioner as a spouse.

In April of 2003, Langley, then age 88, became seriously ill and was hospitalized. During a two-week period in August, he was discharged to petitioner's home, where she cared for him. During the week of September 22, 2003, Reverend David Stechholz visited Langley at the hospital. Stechholz told petitioner that Langley said he wanted to be married to her, a desire he had also communicated to petitioner. Stechholz and petitioner went to City Hall on September 26, 2003, to obtain a marriage license. On the same date, Reverend Stechholz conducted a marriage ceremony at the hospital.

Stechholz and petitioner signed the marriage license and Stechholz returned it to the clerk's office. On September 30, 2003, a clerk from the county clerk's office noticed that Langley had not signed the form and went to the hospital to get his signature. She arrived after he had died.

On October 8, 2003, petitioner filed an ex parte petition to establish the fact of her marriage to Arlington Langley. Attached to the petition was a form of license and certificate of confidential marriage that was not signed by Mr. Langley or certified by the county clerk.

Andrews learned of the filing of the petition from the court's website. On October 27, 2003, she filed a declaration and points and authorities in opposition to the petition. She attached copies of medical records from the Veteran's Administration Hospital where her father was a patient on September 26, 2003, the date of the purported marriage. Andrews argued that her father did not sign the license form and that his medical records raised issues as to his capacity to enter into a valid marriage.

Petitioner filed a second petition under former Health and Safety Code section 10550, (the predecessor to Health and Safety Code section 103450) on November 10,

2003, correcting various procedural deficiencies.¹ Petitioner responded to Andrews' objection, and attached the 1982 notarized statement, her military identification card, a membership roster from the Rotary Club showing that Langley listed his address at her residence, a copy of Langley's military survivor benefit plan naming petitioner as his wife and additional portions of the medical records. The hospital social worker's notes indicated that petitioner and Langley's two daughters from his previous marriage had never gotten along. It appeared to the social worker that Langley "has continued to try and please everyone and it does not seem as if he has been completely upfront about his lifestyle choice or his 'affair.' " The social worker also noted that Langley presented "different information to his daughter than the information he gave his 'girlfriend/wife.' " ²

On December 3, 2003, the court filed its order denying the petition. Petitioner filed a notice of appeal on January 16, 2004.

DISCUSSION

Petitioner requests reversal of the order denying her petition, arguing that the failure to obtain Arlington Langley's signature on the marriage license has no bearing on the validity of the marriage. We have considered the documentary evidence presented to

¹ Health and Safety Code section 103450, subdivision (a) provides: "A verified petition may be filed by any beneficially interested person with the clerk of the superior court in and for (1) the county in which the birth, death, or marriage is alleged to have occurred, (2) the county of residence of the person whose birth or marriage it is sought to establish, or (3) the county in which the person was domiciled at the date of death for an order to judicially establish the fact of, and the time and place of, a birth, death, or marriage that is not registered or for which a certified copy is not obtainable."

² The social worker's notes indicated that petitioner was the breadwinner in the relationship with Langley and that petitioner would not be eligible for government benefits because they had not been married long enough. Petitioner had confirmed in her brief on appeal that she has "little to gain by way of monetary measures" from the declaration of marriage, but seeks only "social dignity."

the probate court.³ Because marriage is regulated solely by statute, we reject her contentions. (*Estate of DePasse* (2002) 97 Cal.App.4th 92, 99 (*DePasse*).)

Family Code section 300 provides: “Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division, except as provided by Section 425 and Part 4 (commencing with Section 500).”

Petitioner sought to accomplish her marriage to Langley through the confidential marriage provisions of Family Code sections 500 et seq. Section 500 of the Family Code provides: “When an unmarried man and an unmarried woman, not minors, have been living together as husband and wife, they may be married pursuant to this chapter by a person authorized to solemnize a marriage . . . without the necessity of first obtaining health certificates.” Family Code section 500 does not dispense with the requirement of a license.

The issuance of a marriage license is a mandatory prerequisite to a valid marriage in California. (*DePasse, supra*, 97 Cal.App.4th at p. 102.) “An ex parte order establishing the fact of marriage pursuant to [Health and Safety Code] section 103450 ‘is merely a statistical record acknowledging the late registration of marriage. It is not presumptive or conclusive proof of the fact of the marriage and has no evidentiary weight whatsoever.’ [Citation.] ‘[T]he purpose of obtaining the order is to obtain a certificate to replace one which was never registered or to obtain a certified copy of the registration when the original records were lost or destroyed.’ [Citation.] Thus the procedure is designed to cure a failure to register the marriage, not the failure to obtain a license.” (*DePasse, supra*, 97 Cal.App.4th at p. 105.)

Petitioner seeks to distinguish the *DePasse* case because the parties in that case, which also involved a deathbed marriage ceremony, did not attempt to get a license and

³ We denied petitioner’s request for judicial notice of documents that were not submitted to the probate court. The documents submitted with petitioner’s request did not include a signed marriage license.

did not hold themselves out as husband and wife. These distinctions make no difference in the resolution of this case. An ineffectual attempt to secure a license and holding out as husband and wife do not satisfy the legal requirements for a valid marriage. *DePasse* directly confronted the issue of whether a marriage license is required for a valid marriage and whether the failure to obtain a license can be cured by the petition process of Health and Safety Code section 103450. *DePasse* held that a license is required and a Health and Safety Code petition does not cure the absence of a license.

Petitioner argues that even if a license were required, the omission of Langley's signature does not void the marriage. She relies on *Argonaut Ins. Co. v. Industrial Acc. Com.* (1962) 204 Cal.App.2d 805 (*Argonaut*), to argue that mere technicalities do not invalidate a marriage. The court in *Argonaut* made it clear that it was discussing a license that had been obtained, albeit by wrongful means. It did not concern a failure to obtain a license duly executed by both parties.

Argonaut was a workers' compensation case in which the insurer sought to invalidate an award of death benefits to the employee's widow. The basis for the insurer's claim was that the parties obtained their marriage license using assumed names.⁴ (*Argonaut, supra*, 204 Cal.App.2d at p. 806.) The court reviewed the applicable statutes and determined that it was the duty of the county clerk to ascertain the truth of the facts in the license application. Relying on the section of the Civil Code that stated that noncompliance with the statute by someone other than a party to the marriage would not invalidate the marriage, the court upheld the award. (*Argonaut, supra*, 204 Cal.App.2d at pp. 807, 809, 811.)

The court in *Argonaut* was able to reach its conclusion because it construed the statutory language: "All persons about to be joined in marriage *must* first obtain a license . . ." as not imposing a mandatory requirement. (*Argonaut, supra*, 204 Cal.App.2d at pp. 807, 810, italics added.) The court in *DePasse* discussed the *Argonaut* case and noted that since the decision in *Argonaut*, the Legislature reorganized the family

⁴ The reason for the subterfuge was that the wife was recently divorced and was obviously pregnant by the decedent. To avoid embarrassment, they applied for and secured a marriage license under false names.

law statutes into the Family Code, and incorporated a provision that specifies that use of the word “shall” indicates the required action is mandatory. (*DePasse, supra*, 97 Cal.App.4th at p. 102; Fam. Code, §§ 6, 12.) Family Code section 350 provides: “Before entering a marriage, or declaring a marriage . . . the parties *shall* first obtain a marriage license from a county clerk.” (Italics added.) Family Code section 505, concerning confidential marriage, provides that the marriage license form, “shall be designed to require that the parties to be married declare or affirm that they meet all of the requirements of this chapter” and “shall include an affidavit on the back, which the husband and wife shall sign” Unlike the situation in *Argonaut*, the statutes today make filling out and signing the marriage license a mandatory requirement for a valid marriage. (*DePasse, supra*, 97 Cal.App.4th at p. 103.)

Petitioner concedes that Langley failed to sign the marriage license. We need not address issues of his intent or mental capacity, which were the subject of conflicting evidence. There was no valid marriage license, and any presumption that may have been raised by the ceremony performed by Reverend Stechholz was rebutted by the undisputed absence of a valid marriage license.

CONCLUSION

The order appealed from is affirmed.

Marchiano, P.J.

We concur:

Stein, J.

Margulies, J.